No. 80-1370

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

SUSAN LOUISE PETERSON,

Petitioner,

vs.

PAUL SORLIEN, NORMAN JUNGCLAUS, MARGARET JUNGCLAUS, KATHY MILLS, VERONICA MORGEL, and MICHELE PERKINS,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

BRIEF OF RESPONDENT PAUL SORLIEN IN OPPOSITION

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OPINION BELOW

The opinion of the Minnesota Supreme Court, No. 266 (1979) is reported at 299 N.W.2d 123 (Minn. 1980).

STATUTES INVOLVED

28 United States Code § 1257. State courts; appeal; certiorari.

Final judgments or decrees rendered by the highest court of a state

in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . . .

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

. . . .

ARGUMENT

PETITIONER HAS FAILED TO ESTABLISH THE JURISDICTIONAL REQUIREMENTS FOR THE COURT TO ISSUE A WRIT OF CERTIORARI.

United States Supreme Court review by writ of certiorari of final judgments rendered by state courts is limited by statute to cases where "any title, right,

privilege or immunity is specially set up or claimed under the Constitution." 28 U.S.C. 1257(3) (1970). Timely and proper presentation of federal questions in state court proceedings is a jurisdictional condition precedent to review both by rule of court and prior decision. Rule 21(h), Rules of the Supreme Court of The United States (1980); Street v. State of New York, 394 U.S. 576, 582, 89 S. Ct. 1354, 22 L. Ed. 2d 572 (1969), Fuller v. State of Oregon, 417 U.S. 40, 50 n. 11, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974). Without exception, the federal constitutional questions presented by the petition for review (Petition, p. i) are being raised for the first time before this Court, and neither the trial court nor the Minnesota

Supreme Court had an opportunity to consider Petitioner's present claims.[1]

The first question advanced by Petitioner for review, whether the false imprisonment and attempted deprogramming by parents of their adult daughter violates the daughter's First and Fourteenth Amendment rights, bears no resemblance to the issues litigated in state court. Petitioner's initial Complaint in this action sets forth two non-federal common law tort claims: false imprisonment and intentional infliction of emotional distress. Petitioner's own statement of the issues raised on appeal to the Minnesota

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[1]The sole constitutional issue raised on Petitioner's appeal to the Minnesota Supreme Court was the trial court's admission of evidence of the organization and of certain practices of the religious group of which Petitioner was a member. That issue is not among the questions presented to this Court by Petitioner for review. (Petition, p. i.)

Supreme Court reveals the absence of the First and Fourteenth Amendment violations now claimed to have arisen out of defendants' conduct. (Petition, p. 4.)

Petitioner belatedly moved to amend the Complaint to assert a federal cause of action arising under Title 42, United States Code § 1985(3) involving an alleged private conspiracy among the defendants to deprive Petitioner of her civil rights. However, the trial court and Minnesota Supreme Court found that under state procedural rules the proposed amendment to the Complaint was not timely and was properly disallowed. (Opinion, Petition, A-19; 299 N.W.2d 132-133. Dissenting Justices Wahl and Otis concurred on that issue. Opinion, Petition, A-26; 299 N.W.2d 135-136.)

Questions Two and Three raised by Petitioner set forth constitutional claims

which only arise (if at all) as a consequence of the decision of the Minnesota Supreme Court, rather than as claims fairly presented to and decided by that Court. Petitioner now claims that the Minnesota Supreme Court's ruling constitutes state action and constitutes a deprivation of her property (her cause of action) without due process of law under the Fourteenth Amendment. Similarly, Petitioner claims that the Court's analysis employed an improper classification and created a suspect class on the basis of religion in violation of the Equal Protection Clause of the Fourteenth Amendment. (Petition, p. i.)

Petitioner's statement of each question demonstrates that she seeks not review of litigated constitutional questions resting upon a complete record of proceedings below, but rather review of

issues raised for the first time by petition for a writ of certiorari from this Court. In view of the well established rule that certiorari will not be granted where a federal constitutional issue is raised for the first time on review of a state court decision, the petition must be denied. Moore v. Illinois, 408 U.S. 786, 799, 92 S. Ct. 2562, 33 L. Ed. 2d 706 (1972); Cardinale v. Louisiana, 394 U.S. 437, 438, 89 S. Ct. 1161, 29 L. Ed. 2d 398 (1969); Estate of Wilson v. Aiken Industries, Inc., mem. dec., Blackmun, J., concurring, 439 U.S. 877, 99 S. Ct. 216, 366, 58 L. Ed. 2d 191 (1978).

Petitioner had the opportunity under Rule 140 of the Minnesota Rules of Civil Appellate Procedure to raise the Fourteenth Amendment claims if they arose from an unanticipated ruling of the Minnesota Supreme Court. Estate of Wilson v. Aiken Industries, Inc., supra; Herndon v.

Georgia, 295 U.S. 441, 443-444, 55 S. Ct. 794, 79 L. Ed. 1530 (1935). However, Petitioner did not elect to petition the Minnesota Supreme Court for a rehearing.[2]

Although Petitioner objected to admission of evidence that Petitioner's religious group participated in the expenses of litigation, no constitutional claim was made to the trial court. (Transcript, 14-17, 205, 227, 834-849.)

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[2]Even if the jurisdictional threshold were satisfied, there is an ample non-federal basis for the judgment on the false imprisonment claim against at least three of the defendants. The trial court determined that the evidence against Respondent Sorlien was insufficient as a matter of law. That ruling was obviously made (and approved by the Minnesota Supreme Court) without reference to the rule subsequently announced on appeal. Similarly, Petitioner sought only nominal damages from her parents, Respondents Norman and Margaret Jungclaus. The Minnesota Supreme Court will not reverse a judgment on appeal merely to allow a plaintiff to recover nominal damages. (Petition, A-12, n. 1; 299 N.W.2d 129, n. 1.)

Rather, Petitioner contended that such evidence was irrelevant and invaded the attorney-client privilege. (Petition, A-31.) Similarly, although Petitioner contended on appeal that the admission of such evidence constituted fundamental error, Petitioner did not claim that the trial court's action violated her First Amendment rights. The Minnesota Supreme Court concluded that the receipt of such evidence was error and declined to sanction an instruction that such evidence could be considered on the issue of damages. In view of the record and the ruling, the issue is extremely unlikely to recur in other litigation and hardly presents a substantial federal question warranting review by this Court.

Finally, Petitioner contends that the few courts dealing with facts involving a "deprogramming" have reached divergent

opinions and that this Court should adopt a "standard" in such matters. (Petition, p. 8.) Cases cited by Petitioner (Petition, p. 8) represent divergent claims brought on the basis of widely varying facts. Because of these differences in both principle and fact, adoption of a constitutional rule delineating the point at which parents or others may intervene and confront a person involved in a high pressure-high intensity group would be impossible. Clearly the record in this case presents no opportunity for the bold pronouncement requested by Petitioner.

CONCLUSION

Respondent Sorlien respectfully submits that the Petition for Certiorari

should be denied for all questions raised by Petitioner.

Respectfully submitted,

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